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9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

12 LISA M. O STELLA,

Case No. 8:11-CV-00485-AG

13 Plaintiff,

14 v.

15 ORLY TAITZ,

16 Defendant.

17

18 **EMERGENCY EX-PARTE MOTION FOR A LEAVE TO FILE AN**

19 **ABBREVIATED AMENDED COUNTER COMPLAINT WITH ONLY 4**

20 **(FOUR CAUSES OF ACTION) AGAINST PLAINTIFF AND COUNTER**

21 **DEFENDANT LISA OSTELLA (PROPOSED AMENDED COUNTER**

22 **COMPLAINT ATTACHED) AND ORDER MANDATORY SETTLEMENT**

23 **CONFERENCE ON BOTH THE COMPLAINT AND COUNTER**

24 **COMPLAINT TO BE HELD TOGETHER**

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4 STATEMENT OF FACTS AND SUMMARY

5 On October 13, 2017, just 3 months ago, after 8 and a half years of litigation, this
6 court summarily denied Defendants motions to dismiss the First Amended
7 Complaint and allowed Plaintiff Lisa Ostella ("Ostella") to file a new Second
8 Amended Complaint (SAC). Defendant Taitz submitted a mandatory two page
9 request for a leave of court to file motions to dismiss the SAC under 12B1, 12B6
10 and AntiSLAPP. As no response was received from the court within 3 weeks, Taitz
11 was obligated to file an answer simultaneously with the mandatory Counter-
12 Complaint.

13 Counter -Complaint was summarily stricken and parties were ordered to participate
14 in the mandatory settlement conference.

15 Settlement conference was held before magistrate judge Rosella Oliver on
16 01.22.2018. At around 3pm Plaintiff Ostella and her attorney, Mr. Lorenzo, walked
17 out. Judge Oliver called Mr. Lorenzo and left a message for him and his client to
18 return, as the settlement conference was ongoing and the insurance representative
19 was still there seeking to continue negotiating settlement. Mr. Lorenzo and Ms.
20 Ostella did not return. Additionally, Mr. Shumann, attorney for Taitz, previously
21 asked Mr. Lorenzo to schedule depositions around the time of settlement
22 conference. It made sense to schedule the depositions, in case the case did not
23 settle, as Ms. Ostella already flew to Los Angeles from New Jersey and her
24 attorney, Mr. Lorenzo, flew to Los Angeles from Florida. They were here and
25 depositions should have taken place. Mr. Lorenzo did not agree and the plaintiff
26 and her attorney flew home without her sitting for the deposition.

27 As of today there was no discovery in this case and no depositions. The main
28 reason the settlement was not successful, is because Ostella was given a huge

1 leeway and was allowed to file her SAC after 8 and a half years of litigation,
2 motions to dismiss SAC were not allowed to be filed yet and, most importantly,
3 Taitz so far was deprived by the court of her constitutional rights of due process
4 and equal protection and was not allowed to proceed with her counter-complaint
5 against Ostella.

6 Taitz is seeking a leave of court to file a very short amended counter-complaint
7 against only one counter -defendant Ostella. The complaint will not have any
8 exhibits and will be very short and will have only 4 (four) causes of action. (see
9 Attached)

10 Taitz is requesting the court to order parties to participate in the mandatory
11 settlement conference on both the SAC and Amended Counter Complaint and
12 order Ostella and her attorney to act in good faith and not walk out in the middle of
13 the settlement conference. Taitz is confident that this case will settle very quickly
14 when both the SAC and the Amended Counter Complaint are considered in the
15 settlement conference.

16 In the very unlikely eventuality that the SAC and the counter complaint are not
17 settled, both should be heard in the same trial. Since both the complaint and the
18 counter complaint arise from the same nucleus of facts, the interests of justice and
19 judicial economy dictate the need for both to be heard by the same jury at trial.
20 Additionally, if the case does not settle, the court should order the parties to
21 conduct the discovery conference with Magistrate Judge Oliver and Plaintiff
22 Ostella should be compelled to appear for the deposition and for production of all
23 Pay-Pal, credit card and banking records of all websites that she ran in connection
24 to and linked to Defend Our Freedoms addresses, including, but not limited to
25 info@goexcelglobal.com Pay-Pal account, LisaOstella@hotmail.com Pay-Pal
26 account, LisaMichelleOstella@yahoo.com, all accounts connected to
27 Breederville.com, BarofOntegrity.com, iDenville.com,
28 NewYorkCityCommunity.com. GoExcelGlobal.com.

1 If Taitz will be deprived of her right to file even a very abbreviated counter-
2 complaint, she will be seeking an appeal based on error and deprivation of her
3 rights of due process and equal protection. The appeal is likely to take about three
4 years in the 9th circuit and is likely to lead to a second trial. In the interest of
5 Judicial Economy and in order to resolve all issues between involved parties
6 expeditiously it is imperative to hear the complaint and the counter complaint in
7 one trial before one jury.

8 **ARGUMENT**

9 The essence of the case at hand is that Ostella offered to help Taitz to create a
10 website with connected Pay-Pal account to help Taitz collect donations for her
11 foundation and for her constitutional rights work. Taitz is an attorney and Doctor
12 of Dental Surgery and the President of Defend Our Freedoms Foundation. After
13 the website existed for about four months, and after the donations level reached
14 about \$5,000 per month, Ostella, by her own admission, locked Taitz and her
15 foundation out of the web site for Defend Our Freedoms Foundation (DOFF) and
16 replaced the foundation Pay-Pal account with her own Pay-Pal account and
17 continued soliciting donations under the name of the foundation "Defend Our
18 Freedoms". Ostella kept the picture of Taitz, the President of the foundation, on the
19 top of the front page of the web site, she kept the name "Defend Our Freedoms" on
20 the top of the site and over the donation button and in the receipt for donors.
21 Ostella was seeking to defraud the donors and make them believe that this is the
22 DOFF web site, when donations made through that web site after April 11, 2009
23 no longer went to the foundation, but went to Ostella's pocket. Additionally,
24 Ostella linked to the DOFF web site an auction web site that she ran as well.
25 Ostella wrote on the web site "Defend Our Freedoms. Want to help out but don't
26 have money to donate? Defend Our Freedoms has partnered with
27 Breederville.com. By registering at this link you can set up a business store, hold
28 an auction, sell your products and sell livestock while supporting Defend Our

1 Freedoms. Not only do you promote yourself and earn money for your own
2 business; but you earn money for Defend Our Freedoms. Defend Our Freedoms
3 makes money from the Breederville.com auction fees. So you don't need to do any
4 additional steps." (<http://www.defendourfreedoms.org:80/auction.html>)
5 This was a scam, an egregious fraud, Ostella did not forward one cent to the
6 Defend Our Freedoms foundation from either the donations that she collected from
7 around April 11, 2009 or auction fees or other scams. Ostella used the web
8 addresses for DOFF to link to her other ventures, such as travel sites
9 GoExcelGlobal site promoting trips to Florida and Caribbean, iDenville.com,
10 where she collected as much as \$1,000 per ad or NewYorkCityCommunity site.

11 Taitz had to create a new web site for the foundation, where she made
12 several notices to the donors, advising them not to go to the old web site, which
13 was taken over by the web master Lisa Ostella, as donations given on that site did
14 not go to the foundation, but went to Ostella's pocket.

15 During 12.20.2010 hearing before Judge Robreno, who presided over this case
16 initially, "Ostella testified that she worked for Taitz as her web designer. She also
17 assisted Taitz with her web site defendourfreedoms.org and connected pay-pal
18 accounts for collecting donations to the site. On cross-examination Ostella
19 conceded that she locked Taitz out of her website defendourfreeoms.org and her
20 associated PayPal accounts" (12.23.2010 Memorandum order by Judge Robreno
21 Dkt 160).

22 Ostella sought to retaliate against Taitz for exposing her diversion of
23 donations from DOFF. She fabricated various defamatory allegations about Taitz,
24 her husband and her donors and supporters. While Taitz traveled to New Jersey to
25 file a police report against Ostella for diversion of donations, Ostella fabricated an
26 extremely defamatory story that Taitz was threatening to kidnap Ostella's children
27 and was seeking a hit man to "professionally kidnap Ostella's children". Ostella
28 admitted that she instigated a criminal case against Taitz, which was immediately

1 dismissed, however, these defamatory statements ruined the reputation of Taitz and
2 represent a valid basis for claim for defamation, malicious prosecution and abuse
3 of process. Later, during 12.20.2010 hearing Ostella admitted that it was a
4 fabrication and that she knew that Taitz traveled to New Jersey to file a police
5 report, not to kidnap Ostella's children.

6 Additionally, Ostella admitted that she forged Taitz's signature by copying
7 her signature from one document to others. She claimed that Taitz allowed her to
8 do so. Taitz never allowed Ostella to forge her signature. Those defamatory
9 allegations reduced Taitz's reputation. Taitz is a licensed attorney and a licensed
10 dentist. Allegations of allowing someone to forge her signature were defamation
11 per se.

12 **AMENDED COUNTER -COMPLAINT IS CONCISE AND ADDRESSED
13 ALL CONCERNs OF THE COURT**

14 Amended complaint addressed all of the concerns of the court, it is very concise,
15 clear and ends all chaos, which was the concern of the court. Firstly, there is only
16 one counter-Defendant, Lisa Ostella. Taitz removed all other counter-defendants
17 and third party defendants. Secondly, Taitz removed all exhibits. Thirdly, the
18 counter-complaint is very concise and does not exceed the size of the Second
19 Amended Complaint, which was recently allowed to be filed by the Plaintiff.

20 **THE COUNTER-COMPLAINT WAS FILED TIMELY**

21 While the court noted that the case is old, Taitz did not have an opportunity to file
22 a counter-complaint, as it is supposed to be filed with the answer, and the answer
23 was not due until now.

24 Taitz filed an CA CCP 425.16 AntiSLAPP against the original complaint. It was
25 denied by this court and was appealed. After 3 years under submission, the 9th
26 Circuit ruled that the plaintiffs were supposed to be given an opportunity to file the
27 First Amended Complaint before the court decided on antiSLAPP. As such, the
28

1 case was remanded to the District Court and defendants filed a new AntiSLAPP
2 motion to strike the First Amended Complaint. It was denied with one word
3 "denied" and appealed to the 9th Circuit. The 9th Circuit found that Taitz satisfied
4 the first prong of the AntiSLAPP and engaged in protected free speech on matters
5 of public importance and consequently dismissed three causes of action. (Court of
6 Appeals Case No. 13-56253; Dkt. No. 676.) The case was remanded to the district
7 court in 2016 and Taitz and DOFF filed 12b1 and 12b6 motions to dismiss the First
8 Amended Complaint. Even though Plaintiff Ostella knew that she was supposed to
9 submit a two page request prior to filing motions, in December 2016-January 2017,
10 she filed without any leave of court 16 different motions and motion related
11 documents, among them a motion seeking to file a Second Amended Complaint.
12 The motions to dismiss the FAC were under submission for nearly a year and in
13 September of 2017 they were summarily denied by the court, without addressing
14 any legal argument or facts in those motions and in October of 2017 Ostella was
15 given a leave to file her SAC. The court did not respond to a request by Taitz to
16 file motions to dismiss the SAC and only in November 2017 the answer and the
17 mandatory counter-complaint were due and were properly filed.

18 Thus, from at least May 2011 through October 2017 Taitz and DOFF could not file
19 an Answer or Counterclaim/Third Party Complaint where the case was stayed due
20 to the appeals and the District Court's orders staying the case; where Taitz and
21 DOFF had pending motions to dismiss and strike under Fed. R. Civ. P 12 and
22 California's anti-SLAPP statute; and where they had pending requests for leave to
23 file motions to dismiss and strike. Moreover, Ostella's operative Second Amended
24 Complaint was not filed until October 14, 2017. Under Fed. R. Civ. P. 12(a), Taitz
25 and DOFF had at least 21 days from October 14, 2017 to file their "Compulsory
26 Counterclaim" under FRCP 13(a). They did so on November 3, 2017.

1 As such, even though the case is lengthy, the counter complaint was not due until
2 November 2017, when it was filed. Since the court has stricken the counter-
3 complaint filed in November of 2017, Taitz is seeking to file an Amended
4 Counter-Complaint addressing all the concerns of the court.

6 **TAITZ MUST BE GIVEN THE OPPORTUNITY TO AMEND THE**
7
COUNTERCOMPLAINT

9 A court may not dismiss an original complaint without leave to amend prior to
10 filing a responsive pleading. FRCP 15(a)(1). A motion to dismiss is not a
11 responsive pleading. Neither the filing or granting of such a motion before answer
12 terminates the right to amend; an order of dismissal denying leave to amend at that
13 stage is improper. "A motion to dismiss is not a "responsive pleading" within the
14 meaning of the Rule. Neither the filing nor granting of such a motion before
15 answer terminates the right to amend; an order of dismissal denying leave to
16 amend at that stage is improper

20 "See also Wood v. Santa Barbara Chamber of Commerce, Inc., 705 F.2d 1515,
21 1520 (9th Cir.1983) (right to amend terminated only by responsive pleading);
22 Halet v. Wend Inv. Co., 672 F.2d 1305, 1310, n. 5 (9th Cir.1982).

25 "In Worldwide Church of God, Inc. v. State of California, 623 F.2d 613, 616 (9th
26 Cir.1980), we said that 'a party may, as a matter of right, amend its complaint once

1 before the filing of a responsive pleading or the entry of final judgment following
 2 dismissal of its action. . . .

3
 4 “Leave to amend may be denied for reasons of ‘undue delay, bad faith or dilatory
 5 motive on the part of the movant, repeated failure to cure deficiencies by
 6 amendments previously allowed, undue prejudice to the opposing party by virtue
 7 of allowance of the amendment, futility of amendment, etc.’ Foman v. Davis, 371
 8 U.S. 178, 182, 83 S.Ct. 227, 230 (1962). But, ‘where the record does not clearly
 9 dictate the District Court’s denial, we have been unwilling to affirm absent written
 10 findings ... and have reversed findings that were merely conclusory.’” (Mayes v.
 11 Leipziger, 729 Fed.2d 605, 607, 608 (9th Cir, (1984)) “Absent prejudice, or a strong
 12 showing of any of the remaining . . . factors,

13 there exists a presumption under Rule 15(a) in favor of granting leave to amend.”
 14 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003)
 15 (emphasis omitted); see Griggs v. Pace Am. Group, Inc., 170 F.3d 877, 880 (9th
 16 Cir. 1999) (stating that when a court conducts a Rule 15(a) analysis, generally all
 17 inferences should be drawn in favor of granting the motion).” Dkt 227 Liberi v
 18 Taitz. Further, after 8 years of litigation this court allowed Ostella to file a SAC
 19 while preventing TAITZ from filing her counter complaint. This court should
 20 have given Taitz and DOFF a leave to file a First Amended Counter Complaint,
 21 as Taitz filed her Counter -Complaint timely together with the answer, only 3
 22 weeks after the SAC was filed.

23
COMPULSORY COUNTERCLAIMS

25 Compulsory counterclaims are claims that “arise[] out of the transaction
 26 or occurrence that is the subject matter of the opposing party’s claim.” F.R.C.P.
 27 13(a). The Ninth Circuit applies a “logical relationship test” to determine whether
 28 a counterclaim is compulsory. Under this test, the court “analyze[s] whether the

1 essential facts of the various claims are so logically connected that considerations
2 of judicial economy and fairness dictate that all the issues be resolved in one
3 lawsuit.” *Pochiro v. Prudential Ins. Co. of Amer.*, 827 F.2d 1246, 1249 (9th
4 Cir.1987) (quoting *Harris v. Steinem*, 571 F.2d 119, 123 (2d Cir.1978)).

5 If a defendant fails to bring a compulsory counterclaim, he is barred
6 from asserting that claim in a future proceeding. FRCP 13(a); Sams v. Beech
7 Aircraft,625 F.2d 273, 276 n. 4 (9th Cir.1980) (citing Baker v. Gold Seal
8 Liquors, 417 U.S.467, 469 n. 1, 94 S.Ct. 2504, 41 L.Ed.2d 243 (1974)); see
9 also Channell v. Citicorp Nat'l Services, Inc., 89 F.3d 379, 385 (7th Cir.1996).

10 FRCP 15(c)(1)(C) provides the federal standard for whether a pleading
11 relates back. Krupski v. Costa Crociere S.p.A., 560 U.S. 538, 541 (2010)
12 (“Rule 15(c) of the Federal Rules of Civil Procedure governs when an
13 amended pleading ‘relates back’ to the date of a timely filed original pleading
14 and is thus itself timely even though it was filed outside an applicable statute
15 of limitations.”). In order for an amended complaint to relate back under FRCP
16 15(c)(1)(C), the following conditions must be met: “(1) the basic claim must
17 have arisen out of the conduct set forth in the original pleading; (2) the party to
18 be brought in must have received such notice that it will not be prejudiced in
19 maintaining its defense; (3) that party must or should have known that, but for
20 a mistake concerning identity, the action would have been brought against it.”
21 Schiavone v. Fortune, 477 U.S. 21, 29 (1986). Factors (1) and (2) apply to the
22 Counterclaim which thus relates back to Plaintiffs’ initial Complaint. Factor
23 (3) is inapplicable.

24 Wright, Miller and Kane, Federal Practice and Procedure (“FPP”) §1419, at
25 152 states that “[T]he majority view appears to be that the institution of
26 plaintiff's suit tolls or suspends the running of the statute of limitations
27

governing a compulsory counterclaim.” “[T]he institution of plaintiff's suit tolls or suspends the running of the statute of limitations governing a compulsory counterclaim.” Burlington Indus. v. Milliken & Co., 690 F.2d 380, 389 (4th Cir.1982), cert. denied, 461 U.S. 914, 103 S.Ct. 1893, 77 L.Ed.2d 283 (1983) (quoting FPP §1419, at 109 (1971)). This view reflects the rationale set forth in FPP that, “This approach precludes plaintiff, when the claim and counterclaim are measured by the same period, from delaying the institution of the action until the statute has almost run on defendant's counterclaim so that it would be barred by the time defendant advanced it. Nor is plaintiff apt to be prejudiced by the tolling of the statute, since he presumably has notice at the time he commences his action of any counterclaim arising out of the same transaction as his suit.”

This approach is followed in the Ninth Circuit: in Religious Tech. Center v. Scott, 82 F.3d 423 (9th Cir.1996): (“[A] compulsory counterclaim relates back to the filing of the original complaint.” Based on the above, the counter-complaint is timely.

OSTELLA HAS ADMITTED WRONGDOING
DEMONSTRATING THAT DOFF IS AN
INDISPENSABLE PARTY

Firstly, this court did not grant the motions to dismiss the FAC and never dismissed the FAC by Berg against the DOFF. As such, DOFF was never dismissed from the case and could file a counter -complaint. Additionally, Ostella's own ongoing admitted wrongdoing against both Taitz and DOFF, makes DOFF an indispensable party in counter complaint.

Ostella admits to locking DOFF from the website she managed as a web master and replacing DOFF PayPal account with her personal account "Ostella changed the PayPal script for the donation button to reflect her own account on defendourfreedoms.net" Liberi et al Memorandum personally signed by Ostella Dkt No 186-2, p 20 Liberi v Taitz 11-cv-485. Similarly, Ostella admitted to the same during December 20, 2010 hearing in the case at hand. Ostella admitted to hijacking the web addresses and website for DOFF, using the name and the web address of DOFF and picture of Taitz, president of DOFF, to divert donations to her own PayPal and credit card accounts. Unsuspected donors believed that they are donating to DOFF. For this reason, DOFF is an indispensable party, as Ostella's actions caused significant injuries to DOFF. As such, DOFF is still a party or alternatively should be allowed by the court to join Taitz as an indispensable party, counter-plaintiff against Ostella.

CONCLUSION

Based on the above, the court should grant Taitz a leave to file an amended counter complaint and order the SAC and the Amended Counter complaint to be heard together at the same mandatory settlement conference or if the case does not settle, at the same jury trial.

Respectfully submitted,

/s/ Orly Taitz,

counselor for counter-plaintiffs Taitz and DOFF

01.28.2018